592

SUPREME COURT OF THE UNITED STATES.

No. 60.

SMITH HARPENDING, ET AL., APPELLANTS,

VERSUS

THE MINISTERS, ELDERS, AND DEACONS OF THE REFORMED PROTESTANT DUTCH CHURCH OF THE CITY OF NEW YORK.

ON APPEAL FROM THE CIRCUIT COURT UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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S. D. Langtree, Print.

SMITH HARPENDING, BENJAMIN YORK, and others
vs.
The MINISTERS, ELDERS, and DEACONS of the Reformed Protestant Dutch Church of the City of New York, and others. } In Equity.

STATE OF NEW YORK,
City and County of New York, ss.

Henry A. Clover, of said city, being duly sworn, saith, that he did, on the thirty-first day of December, 1840, serve on Leonard W. Kip, Esquire, solicitor for the defendants, a copy of the citation issued in the above cause, by delivering the same to a clerk in the office of the said Kip, during office hours, he being absent therefrom; and that he did, on the same day, serve on Isaac Young, Esquire, treasurer of the defendants, The Ministers, Elders, and Deacons of the Reformed Protestant Dutch church of the city of New York, a copy of the said citation, by delivering the same to him personally.

HENRY A. CLOVER.

Sworn the 2d day of January, 1841, before me.

S. RAPALJE,
U. S. Comm. &c.

UNITED STATES OF AMERICA, *ss.*

To the Ministers, Elders, and Deacons of the reformed Protestant Dutch church of the city of New York, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of January next, upon an appeal taken from a decree made in the circuit court of the United States for the southern district of the State of New York, in the second circuit in equity, in a certain cause wherein Smith Harpending, Benjamin York, and others are complainants, and you, the said The Ministers, Elders, and Deacons of the Reformed Protestant Dutch church, together with Isaac Young and Abraham Van Nest, survivors of James C. Roosevelt, impleaded with Peter Harberdinck, are defendants, to show cause, if any there be, why the said decree should not be reversed, and speedy justice done to both parties in that behalf.

Witness the honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this first Monday of August, one thousand eight hundred and forty.

SAM'L R. BETTS.

UNITED STATES OF AMERICA,
Southern District of New York, ss.

I, Frederic J. Betts, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals, on file, and remaining of record in my office.

In testimony whereof, I have caused the seal of the said [L. S.] court to be hereunto affixed, at the city of New York, in the southern district of New York, second circuit, this second day of January, in the year of our Lord one thousand eight hundred and forty-one, and of the independence of the said United States the sixty-fifth.

FRED. J. BETTS, *Cl'k.*

CIRCUIT COURT OF THE UNITED STATES, *for the Southern District of New York, in the Second Circuit.*

Seizin and Partition.

In Equity.

To the Judges of the Circuit Court of the United States, for the the Southern District of New York, in the Second Circuit.

Complaining shew unto your honors, your orators, Benjamin York, and Leah his wife, citizens of the State of Pennsylvania; Henry N. Hall, William Maxwell, Henry Maxwell, Josias Maxwell, Joseph Maxwell, William Maxwell, junior, Leah Sherman, (formerly Maxwell,) and Thomas Sherman her husband, all citizens of the State of New Jersey; Samuel Maxwell, a citizen of the State of Indiana; William Martin, and Ann his wife, John Lare and Mary his wife, all citizens of the State of New Jersey; Isaiah Matteson and Charlotte his wife, Artemas Matteson, and Ann his wife, all citizens of the State of Vermont; Asbury Harpending, a citizen of Christian county, State of Kentucky, and Smith Harpending, a citizen of Nashville, in the State of Tennessee. That John Haberdinck, late of the city of New York, in the Province of New York, now the State of New York, together with Charles Lodwike, Castor Lieurson, Abraham Santvoort and Heyltie Clopper, also of the said province, were, prior to the fourteenth day of September, in the year one thousand six hundred and ninety-six, seized in fee simple according to the laws of England, then in force in such province, and subject thereto, as tenants in common, of a certain tract or parcel of land, then called and known by the name of the "Shoemaker's field or lands" situate in the then North ward of the city of New York, but in the now Second and Third wards of said city, and lying on the northeast side of a street then called Maiden's path, but now Maiden lane, and being so seized, they the said

John Haberdinck, Charles Lodwike, Castor Lieurson, Abraham Santvoort and Heyltie Clopper, agreed to make partition thereof amongst them, according to their several rights and interests, thereinafter and for that purpose, did cause the same, except a certain parcel thereof left undivided as hereafter mentioned, to be divided into one hundred and sixty-four lots; and did also cause a map thereof to be made, and the said lots to be laid down and marked thereon, and numbered from one to one hundred and sixty-four inclusive, in succession, and the said map to be attached to the partition deed thereof hereafter mentioned.—And thereupon the said Charles, Castor, Abraham and Heyltie, by a deed of partition executed by and between them and the said John Haberdinck, bearing date the fourteenth day of September, one thousand six hundred and ninety-six, did release and quit claim to the said John Haberdinck, and his heirs and assigns forever, in severalty, as his equal fifth part and portion belonging unto him of the said premises, the several lots and pieces of ground following, to wit: One piece of ground bounded on the northwest side by a street then and still called Nassau street, and contains along said street one hundred and seventeen feet, and on the southwest side bounded by another street then called Fair street, but now called Fulton street, and contains in breadth along said street seventy-five feet, and on the southeast side bounded by one other piece of ground then belonging to Abraham Santvoort, and contains in length one hundred and seventeen feet; and on the rear or northeast side bounded by the ground then belonging to William Beekman, and contains along said ground seventy-five feet, and is computed three lots, marked in the said map or chart, No. 1, 2, 3. As also another piece of ground bounded on the southeast side by a street then and still called William street, and contains in breadth along said street one hundred and seventeen feet; and on the southwest side bounded by the northeast side of Fair now Fulton street, and contains along said street one hundred and fifty feet, on the northwest side bounded by one other piece of ground then belonging to Heyltie Clopper, and contains in length one hundred and seventeen feet; and on the rear or northeast side bounded by the gronnd then of William Beekman, and contains one hundred and fifty feet, and is computed six lots, and marked in said map or chart, Nos. 11, 12, 13, 14, 15, 16. Also, one other piece of ground bounded on the southwest side by then Fair now Fulton street, and contains along said street fifty feet; and on the northwest side bounded by one other piece of ground then belonging to Charles Lodwike, and contains in length one hundred and seventeeen feet; and on the southeast side bounded by one other piece of ground then belonging to Abraham Santvoort, and contain also one hundred and seventeen feet; on the rear or northeast side bounded by the ground then of William Beekman, containing fifty feet, and is computed two lots, marked in said map or chart, Nos. 19, 20. Also, one other piece of ground bounded on the northeast side by the southwest side of then Fair

now Fulton street, and contains along said street fifty feet; and on the southeast side bounded by one other piece of ground then belonging to Charles Lodwike, and contains in length one hundred feet; and on the northwest side also bounded by one other piece of ground then belonging to Charles Lodwike, and contains in length one hundred feet; and on the rear or southwest side, bounded by a small passage going into a vacant piece of ground, and contains in breadth along said passage fifty feet, and is computed two lots, marked on said map or chart Nos. 44, 45. Also one other piece of ground bounded on the southeast side by the said street called William street, and contains along said street one hundred feet; and on the northeast side bounded by a small passage going into a vacant piece of ground containing in breadth along said passage one hundred feet; and on the southwest bounded by one other small passage going into said vacant piece of ground, and contains along said passage also one hundred feet; and on the rear or northwest side bounded by a vacant piece of ground left undivided, and contains along said ground one hundred feet, and is computed four lots, marked on said map or chart Nos. 62, 63, 64, 65. Also, one other piece of ground bounded on the southeast side by the said street called William street, and contains along said street one hundred and thirty-nine feet; and on the southwest side bounded by a street then and still called John street, and contains along said street one hundred and seventy five feet; and on the northwest side bounded by a passage or street, almost northeast, into a vacant undivded piece of ground, and contains one hundred and twenty-two feet, along said passage or street; and on the rear or northeast side bounded by the aforementioned vacant piece of ground and small passage into it, and contains in breadth along said vacant ground and passage one hundred and seventy-five feet, and is computed seven lots, marked in said map or chart Nos. 86, 87, 88, 89, 90, 91, 92. Also, one other piece of ground, bounded on the southeast by the aforementioned street or passage, and contains along said street or passage one hundred and nineteen feet and one half of a foot; and on the southwest side bounded by the said street called John street, containing along said street seventy-five feet; and on the northwest side bounded by another piece of ground then belonging to Abraham Santvoort, and contains in length one hundred and twelve feet and three sixteenths of a foot; on the rear or notheast side bounded by the aforementioned vacant undivided piece of ground, containing along said ground seventy-five feet, and is computed three lots marked in said map or chart Nos. 82, 83, 84. Also one other piece of ground bounded on the southwest side by the said street called John street, and contains along said street fifty feet; on the southeast by one other piece of ground then belonging to Abraham Santvoort, and contains in length one hundred and five feet and two thirds of a foot; and on the northwest side bounded by one other piece of ground then also belonging to Abraham Santvoort, and contains in length ninety-six feet and

one third of a foot; and in the rear or northeast side bounded by another piece of ground, then also belonging to Abraham Santvoort, and contains in breadth along said ground fifty feet, and is computed two lots, marked in said map or chart Nos. 95, 96. Also, one other piece of ground, bounded on the northeast side by the said street then called Fair now Fulton street, and contains in breadth along said street twenty-two feet; and on the southeast bounded by the ground then belonging to Geesie Van Clyff, containing one hundred feet; and on the northwest side bounded by another piece of ground, then belonging to Castor Lieurson, and contains in length one hundred feet, and on the rear or southwest side, bounded by one other piece of ground then belonging to Castor Lieurson, and contains in breadth eight feet, and is computed one lot, marked in said map or chart No. 54. Also, one other piece of ground bounded on the west southwest side by the street then called the Maiden's path now Maiden lane, containing along said street fifty feet; and on the southeast side bounded by another piece of ground then belonging to Charles Lodwike, containing ninety-three feet and three fourths of one foot; and on the northwest side bounded by one other piece of ground then belonging to Castor Lieurson, containing eighty-seven feet and one half foot; and on the rear or northeast side bounded by another piece of ground then belonging to Charles Lodwike, containing in breadth fifty-four feet, and is computed two lots, marked in the map or chart Nos. 140, 141; (said lots being distant from and on the northwest side of Nassau street fifty feet.) Also, one other piece of ground bounded on the west southwest side of the said street, called Maiden's path, now Maiden lane, and contains along said street fifty feet; and on the southeast side bounded by one other peice of ground then belonging to Castor Lieurson, containing in length one hundred and fourteen feet and three eighths of one foot; and on the northwest side bounded by one other piece of ground, then belonging to Heyltie Clopper, and contains also in length one hundred and eight feet and one quarter of one foot; and on the rear or northeast side, bounded by one other piece of ground then belonging to Abraham Santvoort, containing fifty feet, and is computed two lots, marked in said map or chart Nos. 147, 148, (said piece of ground being distant from and on the southeast side of Nassau street seventy five feet.) Also, one other piece of ground bounded on the west southwest side by the street then called Maiden's path now Maiden lane, and contains along said street twenty-five feet; and on the southeast side bounded by one other piece of ground then belonging to Castor Lieurson, and contains along said ground seventy-eight feet and one eight of a foot; and on the northwest side bounded by several gardens then lying between that street and the street then and still called Broadway, and contains along said garden seventy-five feet; and in the rear or northeast side bounded by one other piece of ground then belonging to Heyltie Clopper, containing also twenty-five feet, and is computed one lot, marked in said map or

chart No. 136. Also, one other piece of ground bounded on the northwest by the street called Broadway, and contains along said street as it was then fenced, in five hundred and eighty feet; and on the northeast bounded by the ground commonly called Colonel Dungan's garden, and some part of the commons, and contains along said garden and common one hundred and sixty feet; and on the southwest side bounded by the street then called Maiden's path now Maiden lane aforesaid, and contains in length along said street one hundred and sixty feet; and in the rear or southeast side bounded by several lots belonging to the several persons therein above named, and is computed five lots, marked in said map or chart Nos. 160, 161, 162, 163, 164, but with a proviso, that two streets were to be deducted out of these last lots, one thirty-three feet, and the other thirty feet broad, as by the said deed, map or chart, thereto attached, and forming a part thereof, duly proved, and recorded in the register's office of the city of New York, the second day of May, A. D. 1715, and to which or to the said record thereof, for greater certainty, your orators pray leave to refer, will more fully and at large appear. By virtue whereof the said John Haberdinck entered upon, and took possession, of and became seized in fee simple of all and singular the said lots of land above mentioned in severalty.

Seisin in common of undivided parcel.

And your orators further shew unto your honor, that the said John Haberdinck, notwithstanding the said partition, continued seized in fee simple, as tenant in common with the parties aforesaid, of, in and to one undivided fifth part of a certain piece of land left undivided by the proprietors of the said tract, lying between the streets now called Nassau and William and Fulton and John streets, being about two hundred feet in length, and about one hundred in width, and being also the same piece laid down on the aforesaid map or chart, annexed to the aforesaid indenture of partition, as not divided among the proprietors of the said "Shoemaker's Field," the parties to the said indenture.

Death of John Haberdinck, leaving his heir at law John Haberdinck, Jr.

And your orators further shew, that some time previous to the seventh day of February, in the year one thousand seven hundred and twenty-three, but at what time your orators cannot state with certainty, the said John Haberdinck, being seized as aforesaid, died; that he left his wife, named Mayken Haberdinck, him surviving, who shortly after, and before the said seventh day of February, in the year seventeen hundred and twenty-three, also departed this life. And your orators also shew, that the said John Haberdinck left no children him surviving, nor the descendants of any children. But that he left him surviving, his kinsman, one John Haberdinck, junior, of the city of New York, cordwainer, called and recognized

by him, the said John Haberdinck, as his kinsman, and who your orators charge was the lawful heir at law, of him the said John Haberdinck, and who was capable of inheriting, and who did inherit the lands and estate of the said John Haberdinck, being the nearest of blood to him then living, who was capable of inheriting the said lands and estate.

Children of John Haberdinck, Jr.

And your orators further shew unto your honor, that the said John Haberdinck, junior, of the city of New York, cordwainer, departed this life sometime after the death of the said John Haberdinck, intestate, and before the year seventeen hundred and ninety, leaving two children, his only heirs at law, viz., Asweris Haberdinck, and Hendrick Haberdinck, who therefore became by decent, seized of, and entitled to, all and singular, the said lands, tenements and hereditaments, herein before mentioned and described.

Death of Asweris Haberdinck.

And your orators further shew, that the said Asweris Haberdinck, departed this life sometime prior to the year one thousand seven hundred and ninety, but at what particular time your orators cannot state, intestate, and without issue, the said Asweris never having been married, whereby his brother, the said Hendrick Harberdinck, became his sole heir at law.

Death of Hendrick Haberdinck—his decendants.

And your orators further shew, that the said Hendrick Haberdinck departed this life sometime in the year one thousand seven hundred and ninety-three, or one thousand seven hundred and ninety-four, intestate, leaving three children him surviving, viz. Leah Haberdinck, Andrew Menton Haberdinck and Peter Haberdinck, a defendant hereafter named, and now a resident and citizen of the State of New York. That the said Leah intermarried with one Nicholas Hall, of the State of New Jersey, and that she and her said husband are now deceased; the said Leah dying intestate, and leaving your orator Henry N. Hall, your oratrix Leah, wife of your orator Benjamin York, and a daughter called Lenah, her only children, and her heirs at law.

And your orators further shew, that the said Lenah, intermarried with one William Maxwell, of the State of New Jersey; that the said Lenah has died intestate, leaving your orator William Maxwell, her husband, and your orators Henry Maxwell, Josias Maxwell, Joseph Maxwell, William Maxwell, Junior, Samuel Maxwell, Leah Sherman, wife of your orator Thomas Sherman, Ann, now wife of your orator William Martin, and Mary, now wife of John Lare, her only children, and her heirs at law.

And your orators further shew, that Andrew Menton Haberdinck, departed this life intestate, and without leaving a widow, leaving him surviving your orators Asbury Harpending, and Smith Harpending, and Charlotte, wife of your orator Isaiah Matteson, and Ann, wife of your orator Artemas Matteson, his only children, and his heirs at law, and that the name of the heirs of said John Haberdinck hath been varied to Harpending.

No sale or disposition by any ancestors of complainants.

And your orators further shew, that no sale, transfer, or conveyance, devise or disposition, has been at any time made, by any or either of the ancestors of your orators, through whom they claim and derive their title to the premises aforesaid, whereby your orators remain, and are together with the said Peter Haberdinck, solely and absolutely seized, and entitled as heirs at law, of and by right of succession and decent from the said John Haberdinck, in and to all the aforesaid described land, tenements and hereditaments, whereof he was seized as aforesaid.

Lease by John Haberdinck for 99 years.

And your orators further shew, that they have been informed, and believe, and therefore charge the truth to be, that the said John Haberdinck, had in his life time, but at what time, your orators are ignorant, and cannot particularly set forth, made, granted, and executed a certain demise or demises, or instrument of lease of the said lands and premises whereof he was seized as aforesaid, or of some one lot, or several lots, or of some piece or parcel of the same, for the term of ninety-nine years, or of some longer term. But whether such lease or leases comprised the lots, or any of the lots so set forth to him in severalty as aforesaid, or the parcel of ground left undivided between him and his tenants in common as aforesaid, your orators are ignorant, and cannot set forth. But your orators are informed, and believe, and therefore charge that such term of years mentioned in such lease or demise, did not expire until after the termination of the year of our Lord one thousand eight hundred and nineteen.

Possession by Dutch Church.

And your orators further shew, that The Ministers, Elders and Deacons of the Reformed Protestant Dutch church, of the city of New York, have for some time past, had possession of all and singular, the said lots and parcels of land, so set apart and allotted, on the partition herein recited, to the said John Haberdinck, to be held by him in severalty. And have stated and claimed, that they took such possession under, and by virtue of some will or devise of the said John Haberdinck, whereby the said premises were devised to them.

And your orators further shew, that the said The Ministers, Elders and Deacons of the Reformed Protestant Dutch church, of the city of New York, compose a religious corporation, located in the said city of New York, and duly incorporated under the laws of the State of New York: and that all the corporators and the individual members of the said corporation, are citizens of the said State of New York.

And your orators further shew, that The Minister, Elders and Deacons of the Reformed Protestant Dutch church, of the city of New York, have obtained possession of the said undivided lot or parcel of ground mentioned in such partition deed, and on the map acompanying the same, as two hundred feet by one hundred feet; and allege, that they have acquired title to some shares or portions therein, by virtue of deeds, or grants, or purchases from some of the owners thereof, who were tenants in common with the said John Haberdinck, of such undivided parcel, or from some person or persons, holding under such joint owners, or some of them; and further, that they have let and demised some parcels of such undivided piece of ground and premises, to some person or persons, to your orators unknown, and upon leases and terms also unknown.

Application to Church.

And your orators further shew unto your honor, that they have frequently, in a friendly manner, applied to the said The Minister, Elders and Deacons of the Reformed Protestant Dutch church, of the city of New York, for an admission and statement as to what will of said John Haberdinck they claimed under, and for permission to inspect and read, and for permission for the counsel and witnesses of your orators, to inspect and read the same, or to admit, that a certain record of the will of the said John Haberdinck, in the office of the Surrogate of the city and county of New York, is a true record and copy of the said last will and testament of the said John Haberdinck, under which they claimed, to the end that your orators might proceed in any suit at law, or in this court, for the establishment of their rights in the premises, as they might be advised.

And your orators further shew unto your honor, that they have in like manner applied to, and asked the said Minister, Elders and Deacons, for a list and schedule of the several lots of lands held by them, or their tenants, in the aforesaid tract, formerly called the "Shoemaker's Field," under color and pretence of title derived from the said John Haberdinck; and have also applied to them for the inspection of any lease, and any assignment thereof to them; and of the rent roll, of the said lands; and for an account of the receipts of the said rents and income thereof; and how, and for what purpose, the same have been, from time to time applied, and expended; and for permission to exhibit the same to the inspection

of their counsel and witnesses; and have also applied to them to come to a fair and just account with your orators, for their proportion of the rents, issues and profits of the said lands and premises, as well of the lots so set apart in severalty, as of the undivided parcel; and to deliver to your orators the possession of the said lands and premises, to be held for their own use, and that of the said Peter Haberdinck, and to make a partition of such undivided parcel.

And your orators well hoped, that the said The Minister, Elders and Deacons of the said church, would have complied with your orators requests, as in equity and good conscience they ought to have done.

Pretences and Charges.

But now, so it is, may it please your honor, that the said The Minister, Elders and Deacons of the Reformed Protestant Dutch church of the city of New York, combining and confederating with Isaac Young, now, or late their treasurer, James C. Rosevelt, now or late their agent, and with Abraham Van Nest, and Abraham Bloodgood, now or late officers of the said church, which said Isaac Young, James C. Rosevelt, Abraham Van Ness and Abraham Bloodgood, are all members and corporators of said corporation, and are severally citizens of the said State of New York, and with divers other persons, at present unknown to your orators, whose names, when discovered, your orators pray may be herein inserted, and they made parties defendants, with proper and apt words, to charge them as such, how to injure your orators in the premises, and to deter and prevent your orators from attempting to prosecute for, and litigate their claim to the said lands and premises, give out in speeches, and pretend that the said John Haberdinck was not at the time of the date of his said will and of his death, seized of any lands or tenements, in the city of New York, and particularly, was not seized of any interest, or estate, in the tract or parcel of land, formerly called and known by the name of the "Shoemaker's Field or Land," on the north side of Maiden's lane or path; the contrary whereof, your orators charge to be true; and that the said John Harberdinck, at the time of his death, was seized of an estate in fee simple, in all, and singular, the lands and tenements, particularly mentioned in the introductory part of this your orators' bill of complaint.

And your orators further shew that the said The Minister, Elders, and Deacons of the Reformed Protestant Dutch church of the city of New York, at times give out and allege that they entered into possession of such premises, and have held, and do now hold the same, under and by virtue of some will, devise, or testament or the said John Harberdinck; and in pursuance of such allegation and pretence, they, the said The Minister, Elders, and Deacons of the Reformed Protestant Dutch church of the city of New York, did, on or about the seventh day of March, in the year eighteen hundred and twenty-two, make and render an account or inven-

tory of their income and property according to the statute in such case made and provided, and therein represented the aforesaid lots and parcels of land as held by them under the will of the said John Harberdinck, describing the said lands and premises as "sundry lots of ground devised to the said church by John Harberdinck, called the Shoemaker's Land, as mentioned in a former inventory, situated in the Second and Third wards of the said city of New York," as by the return and inventory bearing date the seventh day of March, one thousand eight hundred and twenty-two, presented to the then chancellor of the State of New York, on the nineteenth day of March, one thousand eight hundred and twenty-two, and on that day by him ordered to be filed, and filed accordingly, and now remaining in the office of the assistant register of the court of chancery of the State of New York, more fully and at large appears, and to which for greater certainty your orators pray leave to refer.

And the said The Minister, Elders, and Deacons of the Reformed Protestant Dutch church of the city of New York do give out and pretend that such last will and testament so referred to in their inventory and account is a valid and lawful devise, to vest the right and title in and to such lands and premises in them, the said The Minister, Elders, and Deacons of the Reformed Protestant Dutch church of the city of New York; whereas your orators expressly charge the fact to be, that the said John Harberdinck made and published as and for his last will and testament a certain testamentary paper, bearing date the twenty-third day of April, one thousand seven hundred and twenty-two, in the words and figures and to the effect following, to wit:

Will of John Harberdinck.

In the name of God, amen: Know all men by these presents, that I, John Harberdinck, of the city of New York, cordwainer, being indisposed in body, but of sound and perfect mind, memory, and understanding, praised be God for the same, do hereby make, publish, and declare this, my last will and testament, in manner and form following, that is to say: I bequeath my soul into the hands of Almighty God, my Heavenly Father, from whom I received it, and by whose mercy I trust to be saved and received into his eternal joy, through the merits of our dear Saviour and Redeemer, Jesus Christ, and my body, in hopes of a joyful resurrection, I commit to the earth, to be buried in such decent manner and form as my executrix or executors hereafter named shall think fit; and touching the distribution of what temporal estate it hath pleased God to endow me withal in this world, I dispose of the same as followeth: Imprimis, I will that such debts as I shall happen to owe at my decease shall be duly paid.

Item. I give and bequeath unto Joost Christiaen Torvile and his two sisters, all children of Gertrysd Tenhagen, one of the daughters of my cosen Hendrick Tenhagen, deceased, in the time

of his life Comies, at Brevoort, in the county of Sutphen, in the United Belgiac Provinces, one certain obligation of one thousand gilders, Hollands money, equally to be divided between them, put out at interest on the Provinces of Holland and West Friesland, at the office of the receiver general at Seravenhaven, in the name of the Weesmasters of Amsterdam, bearing date the 11th day of July, Anno Domini one thousand six hundred and ninety-six, bought of Jonas Jonasen, which obligation is under the custody and management of Mr. William Van Nuys, merchant, at Amsterdam.

Item. I give and bequeath unto Jan Scholten, chirurgeon, residing in the Province of Holland, and to his two sisters, all children of one of the daughters of my cosen Dirck Tenhagen, statholder, at Scholteur, at Gendiringen, and Etten, near Emerick, in Overysell, in the limits of the said United Provinces; and in case of their decease, to their lawful issue, equally to be divided between them; one other obligation of one thousand gilders, Hollands money, at interest on the United Belgiac Provinces, at the office of the generaletyt, in Seravenhaven aforesaid, on the name of D, bearing date the tenth day of August, one thousand six hundred eighty-eight, bought of Direck Rewyck, which obligation is also in the care and custody and under the management of the aforesaid William Van Nuys.

Item. I give and bequeath unto Alida Sarah, Widow Ticke, living at Amsterdam, one of the daughters of my aforesaid cosen Hendrick Tenhagen, and in case of her decease, to her lawful issue, equally to be divided between them, one other obligation of one thousand gilders, at interest on the United Belgick Provinces, at the office of Ellemeet, to the use in blanco, marked with the letter A, bearing date the 9th day of June, one thousand six hundred and eighty-five, bought of Margrita Vander Doos, widow of Hubert Pollins, which obligation is also under the care and in the custody and management of the aforesaid William Van Nuys.

Item. I give and bequeath under Sarah Tenhagen, Widow Hulst, also living at Utreght, and also one of the daughters of my aforesaid cosen Hendrick Tenhagen, and in case of her decease, to her lawful issue equally to be divided between them, one other certain sum of one thousand gilders, which said sum of one thousand gilders was heretofore in the hands of Levinus Van Schaick, merchant, at Amsterdam, deceased, with orders and directions to put out the same at interest, and is also in the care, custody, and under the administration of the said William Van Nuys, which aforesaid four thousand gilders I, the said testator, do by this my last will and testament, order and direct to be paid to my several beforementioned legatees or their issue lawful representation, without any interest for the time past, or immediately after my decease, and the decease of my wife, Mayken Harberdinck, and not at any time before.

Item. I, the said John Harberdinck, do hereby give, devise, and bequeath, after the decease of my beloved wife, unto Asweris Har-

berdinck, the son of my kinsman, John Harberdinck, Junior, of the city of New York, cordwainer, the sum of fifty pounds, current money of New York, which said sum of fifty pounds, it's my will and direction, my executors shall pay into the hands of The Minister, Elders, and Deacons of the Reformed Protestant Dutch church of the city of New York, for to be by them put upon interest, and the said interest by them applied until the said Asweris shall attain the age of fifteen years and no longer, to the education of him, the said Asweris, but what interest shall be received of the aforesaid fifty pounds after that date until the said Asweris shall attain to the age of twenty-five years, at which time, and not before, it's my will, order, and direction neither the principal nor received interest to be paid nor to be received by him. But in case the said Asweris shall happen to depart this life before he attain to the age of twenty-five years, then I give, devise, and bequeath the aforesaid fifty pounds, with all the interest, unto all the brothers and sisters of him, the said Asweris Harberdinck, equally to be divided amongst them.

Item. I, the said John Harberdinck, do hereby give, devise, and bequeath unto The Minister, Elders, and Deacons of the Reformed Protestant Dutch church of the city of New York and their successors forever, all that my testator's right, title, interest, and property in and to an equal fifth part, share, and proportion of all that tract or parcel of land situate, lying, and being upon Manhattan's Island, within the city of New York, called or known by the name of Shoemaker's Field or Land, on the northeast side of Maiden's Lane or Path, which leads unto a certain street called Queen street, the which said tract or parcell of land contains by estimation about sixteen acres; and by mutual consent, agreement, and approbation of all the proprietors and part owners therein concerned, some years past was surveyed and laid out into one hundred and sixty-four lots, with convenient streets and lanes to accommodate the same, as may fully and amply appear, by a certain instrument of indenture with the map or chart thereunto annexed, under the hands and seals of all the proprietors and part owners, viz: Charles Lodwick, Carsten Leursen, Abraham Sanford, Heyltie Clopper, and the said testator, John Harberdinck, as by the said indenture, with the chart or map bearing date the fourteenth day of September Anno Domini one thousand six hundred and ninety-six, relation being thereunto had more fully and at large doth and may appear. By which indenture, with the chart or map thereunto annexed, it is declared and agreed that the said John Harberdinck's proprietie, share, and dividend in the said one hundred and sixty-four general lots, which be and consist in five and thirty lots, described, markt, and numbered, viz: Number one, two, three; eleven, twelve, thirteen, fourteen, fifteen, sixteen; nineteen, twenty; fourty-four, forty-five; sixty-two, sixty-three, sixty-four, sixty-five; eighty-six, eighty-seven, eighty-eight, eighty-nine; ninety, ninety-one, ninety-two; eighty-three, eighty-four; ninety-

five, ninety-six; fifty-four; one hundred and forty; one hundred and forty-one; one hundred and forty-seven, one hundred and forty-eight, and one hundred and thirty-six, situate, lying, and being butted, bounded, and containing in length and breadth as by the said indenture, with the map or chart amply and largely is described, mentioned, and expressed, together with four other lots or pieces of ground more out of the five lots mentioned in the said indenture and map or chart, and markt one hundred and sixty, one hundred and sixty-one, one hundred sixty-two, one hundred sixty-three, one hundred sixty-four, which said four lots or pieces of ground are situated, lying, and being butted and bounded as follows, viz: two of them containing each twenty-nine foot, now in the tenure and occupation of John Cure, bounded northwest by the street called the Broadway, southeast and southwest by land formerly belonging to Abraham Sanford, northeast by lands formerly belonging to Carsten Leursen; and the other two lots, each of them containing in breadth twenty-five foot, now in the tenure and occupation of Evert Pelts, bounded northwest by the said Broadway, northeast by lots formerly belonging to Carsten Leursen, and southwest by the street called John street, in length one hundred and sixty foot, all which several and respective lots, pieces and parcels of land, I, the said testator, do hereby give, devise and bequeath unto the said Minister, Elders and Deacons of the Reformed Protestant Dutch church of the city of New York, and to their lawful successors forever, with all and singular, the buildings, messuages, edifices, improvements, emoluments, profits, benefits, reversions, advantages, hereditaments and appurtenances, thereunto belonging, or in any wise appertaining or reputed or esteemed as part and belonging to the same; to have and to hold all the aforesaid several and respective lots, pieces and parcels of land, with the several and respective premises and appurtenances, unto the said Minister, Elders and Deacons of the Reformed Protestant Dutch church of the city of New York, and their lawful successors, to the sole and only proper use, benefit and behoof of the said Minister, Elders and Deacons of the Reformed Protestant Dutch church of the city of New York, and their lawful successors for ever, for to be received and employed by the said Minister, Elders and Deacons of the Reformed Protestant Dutch church of the city of New York, immediately after my decease and the decease of my wife Mayken Harberdinck, and only to the proper use, benefitt and behoof, and for the payment and satisfaction of the yearly stipend, salary or maintenance of the respective minister or ministers which from time to time, and at all times hereafter shall be duly and legally called to the ministrie of the said church, and to no other use or uses whatsoever. And I, the said testator, do hereby further order and direct, that the sole management, direction, administration and government of the same after my decease and the decease of my wife Mayken Harbendinck, shall only be and remain in the hands, care, management, direction, and administration and government

of the Elders of the said Church for the time being, or whom they shall nominate, constitute and appoint to act in their stead or place, and without being subject or bound to render any account of the same, but only to the Minister or Ministers, Elders and Deacons of the said Reformed Protestant Dutch Church of the city of New York, for the time being. Provided always, that it shall not be lawful, nor in the power of the said Minister, Elders and Deacons of the Reformed Protestant Dutch Church of the city of New York, nor their successors, nor the said Elders or Managers for the time being, nor in the power of any other person or persons whatsoever, for ever hereafter, to make sale, dispose or alienate any part of the said lands and premises, nor any of the profits, benefits, revenues, or advantages accruing or arising out of the same, to any use or uses whatsoever, but that the same shall be forever and remain to the only proper use, benefit and behoof as is above recited, declared and expressed.

And I, the said John Harberdinck, do further give, devise and bequeath unto my said wife Mayken Harberdinck, all the rest of my temporal estate, real and personal, none excepted, whether the same shall be and consist in houses, lands, goods, chattles, gold, silver, moneys, negroes, bonds, mortgages, bills, books, debts, or any other effects or estate whatsoever, none in the world excepted, to have and to hold all the rest and remaining part of my estate, except what part as above, is bequeathed and disposed unto my said wife Mayken Harberdinck during her natural life; and after her decease I give, devise and bequeath one just and equal quarter thereof unto my wife's sister Jannatie Boss, widow of John Peterson Boss, and in case of her decease, to be equally divided between all the children of her the said Jannatie Boss, their heirs and assigns forever. One other just and equal quarter part thereof I give, devise and bequeath unto Elsie Sanders, widow of Robert Sanders, another of the sisters of my said wife, and in case of her decease, to be equally divided between all the children of her the said Elsie Sanders, their heirs and assigns forever. One other just and equal quarter thereof I give, devise and bequeath unto all the children of Baltis Van Cleeck, late of Dutches county, dec., another brother of my wife's, to be equally divided between them, and to their heirs and assigns for ever. And the other equal part quarter thereof I give, devise, and bequeath unto all the children of Catelyntie Van Benthuysen, late of Albany, deceased, another of my wife's sisters, to be equally divided between them, and to their heirs and assigns forever; provided always that all and every of my aforesaid wife's sisters, and their children, and the children of my wife's brother, to whom have I given, devised and bequeathed my estate to, after the decease of my wife aforesaid, do, all and every of them, justly account and pay what every of them are severally indebted to my said estate, be it by account, bill, bond, mortgage or any other way whatever. And I, the said John Harberdinck, do nominate and appoint my trusty and loving wife Mayken Harberdinck, if she

shall survive me, to be the sole executrix of this my last will and testament; and after her decease, to the end a just and equal dividend may be made of whatever may be left of my estate after the decease of my wife, I do order, constitute, and appoint my two kinsmen, Barent Van Klesh, of Dutchess county, planter, and Johannes Hardenbrook, of New York, tanner, to be executors of this my last will and testament, revoking all former wills by me heretofore made, and this to be only taken as my last will and testament, and no other; and notwithstanding my former gifts, grants and bequests by this my will made, I give, devise and bequeath unto my said kinsmen, Barent Van Klesh and Johannes Hardenbrook, appointed executors after the decease of my wife, for their trouble in making the dividend amongst my wife's relations, pursuant to this my last will, and to have each of them the sum of twenty-five pounds, current money of New York, besides the charge they shall be at and accrue on the estate, in keeping of books, accounts and making the divident.

In witness whereof, I, the said John Harbendinck, have hereunto put my hand and seal, as also to a true duplicate hereof, in New York, in America, this twenty-
[L. S.] third day of April, in the eighth year of His Majesty's reign, Anno Domini one thousand seven hundred and twenty-two.

"JAN. HARBERDINCK.

Signed, sealed and delivered by the testator, John Harberdinck, to be his last will and testament, in the presence of

"JON. FRENCH,
"WM. WALLING,
"JOHN TAYLOR,
"ALLANE JARRATT."

Which said last will and testament was proven by the executors therein named, before William Burnett, Captain General and Governor in Chief of the said province of New York, on the 7th day of February, in the year one thousand seven hundred twenty-three, in the prerogative court of said province, and letters of administration granted thereupon, to the said executors, as by such last will and testament, the record of such will, the probate thereof and letters testamentary on file in the office of Surrogate, for the city and county of New York, will on reference appear.

Devise void.

And your orators further shew, that the said John Harberdinck died without revoking, altering or adding to such last will and testament. And your orators expressly charge that such last will and testament, and all and every provision, devise and bequest therein, relating to, or pretending to devise to and vest in the said The Minister, Elders and Deacons of the Reformed Protestant Dutch

Church of the city of New York, any lands, tenements and hereditaments, and any estate, right, title and interest therein, was at the time of the date thereof, and of the death of the said John Harberdinck, and so remain and now are wholly and absolutely void, illegal and inoperative in the law. That the said The Ministers, Elders and Deacons of the Reformed Protestant Dutch Church of the city of New York could not and did not acquire or take any right or estate, in and to such premises or any part thereof thereby or thereunder, and that the possession of such premises was in subordination to the just right and title of the ancestors of your orators, and of your orators with the said Peter Harberdinck, since the death of such ancestors.

And your orators further charge, that in and by such last will and testament, four certain lots described in such will, being parts and parcels of two of the five several lots of land, situated upon Broadway, which on such partition were awarded and set apart to the said John Harberdinck, were given and devised or purported so to be; nevertheless, that the said The Ministers, Elders and Deacons of the Reformed Protestant Dutch Church of the city of New York took possession of and held and occupied the whole of the said five lots so set apart to the said John Harberdinck upon the partition aforesaid.

And at other times, the said The Ministers, Elders and Deacons of the Reformed Protestant Dutch Church of the city of New York, give out and pretend that they entered into the possession of the said several lots and parcels of land under a claim of title adverse and hostile to that of the said John Harberdinck, junior, and of your orators and their ancestors, and have always held and enjoyed the same, under such claim, and have thereby acquired a valid title to the said lands—the contrary whereof your orators charge to be true; and especially your orators charge, that the said Ministers, Elders and Deacons of the said church, first entered into the possession of the said several lots and parcels of land as the assignees of the aforesaid leased, leases for long terms made by the said John Harberdinck in his life time, or of some of such leases, which terms were unexpired at the death of the said John Harberdinck, but which have lately expired, or under, and by virtue of some other title derived from the said John Harberdinck, and subordinate to the aforesaid title of your orators and the said Peter Harberdinck, and their ancestors and not otherwise; and particularly under, and by virtue of a demise of the aforesaid lands and premises, or parts thereof, and of the rents and reversions thereof, for the term of ninety-nine years, or for some other long term of years, made by the said John Harberdinck to the said The Ministers, Elders and Deacons of the said church, or to some other person or persons, and assigned to them, which expired some time between the year one thousand eight hundred and ten and one thousand eight hundred and twenty-two, and that under and by virtue of

some such title derived from the said John Harberdinck, and subordinate to the title of your orators and the said Peter Harberdinck, and not otherwise, they the said The Minister, Elders and Deacons of the said church have ever since claimed, held and enjoyed the said several lots and parcels of land in the aforesaid Shoemaker's field; and so lately as the year one thousand eight hundred and ten, the said Ministers, Elders and Deacons as your orators expressly charges, in making an inventory, and return of their property and income under the statute in such case made and provided, did represent the aforesaid lots and parcels of land to have been demised to the said church by the said John Harberdinck, and to be held by them under such demise, describing the same in the following words:—"Sundry lots of ground demised to the said Church, by the said John Harberdinck, deceased, being part of a patent called the Shoemaker's land, situate in the Second and Third ward." And again—"Rents arising from the lots demised by John Harberdinck, and those purchased, $12,214 39," as by the inventory and return, dated the first day of February, 1810, made by the said Minister, Elders and Deacons under their incorporate seal, and signed by Gerardus A. Kuypers, their president, and duly proved and acknowledged before Pierre C. Van Wyck, recorder of the city of New York, the second day of February in the year aforesaid, and duly filed and now remaining in the office of the assistant register of the court of chancery of the State of New York more fully appears, and to which your orators pray leave to refer for greater certainty.

And your orators further show and charge, that in the charter of incorporation of the aforesaid Minister, Elders and Deacons, granted by letters patent under the great seal of the Colony of New York, bearing date the 11th day of May, one thousand six hundred ninety-six, it is recited, that the King had been informed by the petition of sundry persons therein named, that the then present Minister, Elders and Deacons of the Dutch Protestant Congregation in the City of New York, presented to Benjamin Fletcher, Captain-General and Governor-in-Chief of the Province of New York, &c. that The Minister, Elders, and Deacons, and other members in communion of the Dutch Protestant Congregation in the City of New York, had at their own charge, built and erected a church in said city, and the same, with a cemetery or church-yard thereto adjoining, had dedicated to the service of God, situate, lying, and being in a certain street called Garden street, and particularly bounded and described in the said charter, together with another lot of ground adjoining to the north side of said church lot, and particularly also described in the said charter, and were also seized in their demesne as of fee as in right of the said church, of a certain messuage or loft of ground situate, lying, and being in said city, in a certain street called and known by the name of Beaver-street, and particularly bounded and described in the said charter. And also of a certain manor, commonly called and known by the name of "The Manor of Fordham," situate, lying, and being in the

county of Westchester, to the eastward of Harlaem-river, and near unto the passage called Spitin Devil, and known by the name of Kingsbridge, and also particularly described in the said charter. And also of and in a certain parcel of meadow, No. one, situate, lying and being on the said Harlaem river, near the said Manor of Fordham, and also particularly described in the said charter; and that the King had been prayed to make his grant and confirmation of all and every of the premises, and that the King would be graciously pleased to make them and their successors for ever, capable to hold and enjoy the same by incorporating the members of the said Dutch Protestant Congregation in the city of New York aforesaid, in a body politic and corporate, by the name and style of "The Minister, Elders and Deacons of the Reformed Protestant Dutch Church of the City of New York," and that the King was willing to grant the favor prayed for—and for that purpose, that they might be in the better capacity to hold and enjoy the premises, the said King did, in and by the said charter, ordain and declare, that the aforesaid church, built and erected as aforesaid, situate, lying and being within the limits aforementioned, and the ground thereunto adjoining and inclosed, and intended to be used for a cemetry or church-yard, should be the church and church-yard of The Minister, Elders, and Deacons, and other members of the Reformed Protestant Dutch Church of the city of New York; and the same was thereby declared to be for ever separated and dedicated to the service of God, and to be applied only to the use and behoof of the members of the said Dutch Church. And the said King, by the said charter did constitute Mr. Henricus Sityus, minister of the said Reformed Protestant Dutch Church in the City of New York, who, it was also declared, had, since the building and dedication of said church to the service of God, well and religiously supplied the same in all divine offices for the service of God and the instruction of the members of the said church. And the King by the said charter did ordain, constitute, and declare, that they, the said petitioners, and all such others as then were or thereafter should be admitted into the communion of the said church in the city of New York, should from time to time, and at all times for ever thereafter, be a body corporate and politic, in fact and name, by the name of The Minister, Elders, and Deacons of the Reformed Protestant Dutch Church; and be capable to have, take, acquire, and purchase lands, tenements, or hereditaments, or any goods or chattels, and the same to lease, demise, grant and dispose of at their own will and pleasure, as other liege people, or any corporation or body politic may lawfully do, over and above the rents, tenements, messuages and hereditaments thereby settled on the said corporation and their successors, not exceeding the yearly value of two hundred pounds current money of the Province of New York, (which is of the value of five hundred dollars money of account of the United States of America.) And the King did further, by the said charter, ordain, that it might be lawful for the deacons of the

said church, at any time or times when the members of the said church should meet and assemble together in the said church for the public worship or service of God, to collect and gather the free and voluntary alms of the members of the said church congregated as aforesaid, to be employed as in the said charter directed. And also that the minister of the said church, for the time being, should and might, by and with the consent of the elders and deacons aforesaid, from time to time as need should require, nominate one or more other able minister to be preachers and assistants to said minister and his successors, in the celebration of divine offices of praying and preaching, and other duties incident to be performed in the said church, as The Minister, Elders, and Deacons of the said church should requiie of him. And the King did further authorize repairing, amending, and enlarging the said church, and the steeple, belfry, cemetery or church-yard, and other things necessary and belonging to the said church. And the King did further appoint the said church as the place of meeting of the members of the said church, to consult and make order for the repairs and concerns of the said church, as by reference to the said charter, the original whereof is in the possession of the said Minister, Elders and Deacons of the said church, will more fully and at large appear.

And your orators further charge, that the annual value and income of the property wherewith the said church was endowed, and which it held at the time of its incorporation, was and ever after continued to be of considerable value, and that the same now is and for twenty years last past has been, of the yearly value of at least ten thousand dollars.

And your orators further charge, that the yearly value of the aforesaid several lots and parcels of land in the tract called the Shoemaker's Field, so as aforesaid claimed and possessed by the said Minister, Elders, and Deacons under the said John Harberdinck, and whereof the said John died seized, greatly exceeded the sum of two hundred pounds, or five hundred dollars, at the time of the death of the said John Harderdinck, and at the time of the death of the said Mayken Harberdinck, and at the time when the said Minister, Elders, and Deacons, took possession thereof, and entered into the receipt of the rents, issues, and profits thereof, and although the capacity of the said The Minister, Elders, and Deacons of the said Church, to take and hold real estate and other property, has been, from time to time, enlarged since that period, yet your orators charge, that from the time when the said corporation first took possession of the said lands, and more especially from the times when the lease or leases so as aforesaid executed by the said John Harberdinck expired, the yearly value of said lands has in each year since that time, greatly exceeded the amount of which the said Minister, Elders, and Deacons were, in such year, by law authorized to take and hold: that from the year one thousand seven hundred eighty to one thousand eight hundred, the said lots and parcels of land were of the yearly value of ten thousand dollars,

from the year one thousand eight hundred to the year one thousand eight hundred twenty, the same were of the yearly value of at least twenty thousand dollars; and from that time to the present, the same have been and yet are of the yearly value of at least thirty thousand dollars.

Your orators further charge, that the said, The Minister, Elders, and Deacons of the said Church, in order to lessen and keep down the annual amount of the income and rents of the said several lots and parcels of land, have, from time to time, executed leases of the said premises or parts thereof, for terms of several years, at a low and inadequate rent, and then sold the terms of such leases for large sums of money, and have applied the money thus raised, to the purchase of other lands, or otherwise invested the same.

And your orators not only charge, that the said Minister, Elders and Deacons have always held the several lots and parcels of land, under claim of title subordinate to the aforesaid title of your orators and the said Peter Harberdinck, and their ancestors; but your orators are advised, and insist, that the said Minister, Elders and Deacons of the Church aforesaid were always incapable in law of acquiring a valid title in and to the said several lots and parcels of land by adverse possession.

And again your orators charge, and insist, that the said The Minister, Elders, and Deacons of the said church were, at the time of the death of the said John Harberdinck, and have been ever since, incapable in law, of acquiring and holding the said lands or any part thereof, by devise; and even if it should appear that the same were actually duly devised to them, the said The Minister, Elders, and Deacons of the said church, in and by the said will (which your orators in no sort admit, but the contrary whereof they charge and insist to be the case,) still your orators charge that it will appear that such devise was made on the express condition that the said lands were to be held, received and employed by the said Minister, Elders, and Deacons of the said church, for payment and satisfying of the yearly stipend, salary, or maintenance of the respective minister or ministers which should be from time duly and lawfully called to the ministry of the said church, and to no other use or uses whatever; and also on the express condition that it should not be lawful, nor in the power of the said Minister, Elders, and Deacons, to sell, dispose of, or alienate any part of the said lands and premises, nor to apply any of the profits, revenues, or income thereof, to any other use or uses whatsoever than those above mentioned. And your orators further charge, that at the time of the date of the said will, and of the death of the said John Harberdinck, the only church and house of public worship of the said The Minister, Elders, and Deacons of the Reformed Protestant Dutch Church of the city of New York, was the church in Garden street, mentioned in the charter of said church; that the said Minister, Elders, and Deacons have since erected two other churches,

to wit, one at the corner of Nassau and Cedar street, and the other on the west side of William street, in the said city; that the members of the said church have, for a long time, ceased to occupy said church in Garden street, or to meet therein for divine worship; but usually meet and attend divine service in the said churches at the corner of Nassau and Cedar streets, and on the westerly side of William street, where the ministers of the said church attend and officiate. And the said The Minister, Elders, and Deacons of the said church have not, for a long time, applied any part of the yearly income of the aforesaid lots and parcels of land to the payment of the yearly stipend, salary, or maintenance of a minister in the Garden street church, but have applied a small part thereof to the support of ministers who attend and officiate in the two churches above mentioned, and have applied the residue, and the greater part of the said yearly income, to other purposes; and the annual rents, income, and profits of the said land have, for a long time past, greatly exceeded the yearly stipend, salary, and maintenance of all the ministers of the said church; and that after satisfying all the uses, purposes, and objects to which the rents, income, and profits could lawfully be applied, under the said devise, if any there be, a larger surplus has annually, for more than fifty years last past, actually remained in the hands of the said The Ministers, Elders, and Deacons of the said church, in and to which your orators are well entitled, even if there should be any valid devise, as pretended and set up by the said The Ministers, Elders, and Deacons of the said church, and of and for which your orators are entitled to a full, fair, and accurate discovery and account; and they have, accordingly, often requested such discovery and account of the said Ministers, Elders, and Deacons. Nevertheless, under various unreasonable and unjust pretences, the said The Ministers, Elders, and Deacons of the said church have also refused and declined to comply with such your orators last mentioned request, or with any part thereof.

All which actings and doings of the said confederates, are contrary to equity and good conscience, and tend to your orators manifest wrong and injury in the premises.

In tender consideration whereof, and for as much as your orators cannot compel discovery, and obtain adequate relief in the premises, save in a court of equity, where matters of this and the like nature are properly cognizable and relievable.

To the end, therefore, that the said The Ministers, Elders, and Deacons of the Reformed Protestant Dutch Church in the city of New York, may, under their corporate seal, and the said Isaac Young, James C. Rosevelt, and Abraham Van Nest, and Peter Harberdinck, may, on their several and respective corporal oaths, full true, and perfect answers make to all and singular the matters and things herein before stated and charged, as fully and particu-

larly as if the same were herein repeated, and they thereunto particularly interrogated, paragraph by paragraph; and may especially set forth and discover whether they claim, under any will of the said John Harberdinck; and if so, the date and full contents of said will; that they, the said The Ministers, Elders, and Deacons of the Reformed Protestant Dutch Church of the city of New York, Isaac Young, James C. Rosevelt, and Abraham Van Nest, may produce and exhibit the same at such time and place as your honors shall direct for the inspection of your orators, his counsel, attornies, and solicitors, and may set forth and discover what portion of the premises, so called, the "Shoemaker's field or land," they claim to be entitled to under such will, and whether the said parcels so claimed, comprise all the parcels of land which, upon the partition made in the year one thousand six hundred ninety-six, as aforesaid, fell to the share, and were allotted and released to the said John Harberdinck, and if not, which of such lots are claimed as having been devised to them in and by such last will and testament, and the boundaries and dimensions of such lots respectively; and may further set forth and discover whether they took possession of the whole of the said five lots of land situated upon Broadway, and allotted, upon the partition herein before mentioned, to said John Harberdinck, and which five lots are marked on the map, hereto annexed, as numbers 160, 161, 162, 163, and 164; or if any, and what part of such lots; and whether they now are in possession thereof, and of which or what part thereof, and whether they have conveyed any part or portion of such several lots or parcels of ground, and when and to whom, and for what purposes, and whether they have executed and delivered any lease or leases of the same, or any part thereof, and what part, and when, and for what term of years, and what rent was reserved in and by any such lease or leases; and may also set forth and discover whether they did not become the purchasers of, or in some manner procure a title, or claim to have procured a title to an undivided share, or part of some undivided share, or part of the parcel or block of ground left undivided upon the partition aforesaid, and which, upon the map or chart hereto annexed, is marked with the letter A; and may also set forth whether they acquired such title, or claim to have acquired such title under and from the said Charles Lodwike, Caster Lieurson, Abraham Santvoort, and Heyltie Clopper, or one or some of them, or from and under some other person or persons claiming to derive title under them, or some or one of them, and the name or names of such person or persons respectively; and whether they have not been in the possession of the whole of such undivided parcel of ground, and received the rents and profits thereof, or of what part they have had possession, if less than the whole; and whether they are now in possession thereof, by their tenants or otherwise, or of any and what part thereof. And that they may also set forth and discover whether they did not enter into possession of such land called the Shoemaker's field, or

some part, and what part, under and by virtue of a certain lease or demise, for a term of ninety-nine years, or some other term, and for what, executed by said John Harberdinck to them the said The Ministers, Elders, and Deacons of the Reformed Protestant Dutch Church of the city of New York, or to some other person or persons, and whom; and whether such lease or demise was assigned to them, The Minister, Elders, and Deacons aforesaid, and whether they, the said defendants, have now in their possession, or under their control, or in the possession and control of either of them, and which, any such lease or demise as herein referred to, and may produce the same for the inspection of your orators, their solicitors, and counsel; and if the same is not now in their possession, or in the possession of either of them, that they may set forth and discover whether they, respectively, have not had possession thereof, and when and where the same now is, and the terme and full contents thereof; and may also discover and set forth all and every other lease, deed, muniment, and evidence of title relating to the said lands and premises in the tract formerly called the Shoemaker's field, executed by, or derived from, the said John Harberdinck; and may also discover and set forth a list and description of the several lots of land, divided or undivided, in the said tract, which are now held by the said Minister, Elders, and Deacons of the said church, under any claim or pretence of title, in any manner derived from the said John Harberdinck; and may also discover and set forth a full, just, and true account of all the rents and income of the said several and respective lots, and each of them, and of the yearly value thereof, for each year since they entered into possession thereof, respectively, and of the uses and purposes to which they have applied the same rents and income, and every part thereof; and that the rights of your orators in the said land, or in the surplus of the rents and profits thereof, as such rights shall appear, after full discovery shall have been made by the said defendants, may be settled and established; and that the said The Minister, Elders, and Deacons of the said church, may come to a full and just account with your orators for the rents, income and profits of the said lands and premises, or for so much and such parts thereof as your orators may be entitled to demand from the said The Minister, Elders, and Deacons of the said church; and that partition may be made between your orators and the said The Minister, Elders, and Deacons of the said church, and the said Peter Harberdinck, of all and singular the said tract or parcel of land left undivided as aforesaid, and marked A upon the map hereto annexed, according to the rights, interests, and shares of your orators, and such defendants therein, in case the said The Minister, Elders, and Deacons of the said church have become entitled to any share or right in the same under the several persons, or any of them, who were tenants in common with the said John Harberdinck, at the time of the partition hereinbefore mentioned. And that your orators may have such further relief, or such other relief

in the premises, as shall be agreeable to equity. May it please your honor to grant unto your orators the writ of subpœna, issuing out of and under the seal of this honorable court, to be directed to the said The Minister, Elders, and Deacons of the Reformed Protestant Dutch Church of the city of New York, and also to the said Isaac Young, James C. Rosevelt, and Abraham Van Nest, and Peter Harberdinck, and their confederates, when discovered, commanding them, and every of them, to be and appear before your honors, in this honorable court, at a certain day, and under a certain penalty therein to be expressed, then and there to answer the premises, and to stand to, abide, and perform such orders and decrees therein, as to your honors shall seem meet and agreeable to equity and good conscience.

And your orators will ever pray, &c.

SMITH HARPENDING.
GRAHAM, HOFFMAN & SANDFORD,
Solicitors for Complainants.
DAVID B. OGDEN,
BENJAMIN F. BUTLER,
Of Counsel for Complainants.

IN THE CIRCUIT COURT OF THE UNITED STATES,
For the Southern District of New York, in the second Circuit.

The plea and answer supporting the same, of the Minister, Elders and Deacons of the Reformed Protestant Dutch Church of the city of New York, to certain parts of the amended bill of complaint exhibited in this court by Benjamin York, and Leah his wife, Henry N. Hall and others, against these defendants, and Isaac Young, James C. Roosevelt and Abraham Van Nest, and the disclaimer of these defendants to so much of the said bill of complaint as relates to certain lots of land therein mentioned.

These defendants, the Minister, Elders and Deacons of the Reformed Protestant Dutch Church of the city of New York, by protestation, &c., as to all the relief by the said bill of complaint sought or prayed from these defendants, except as to the pieces of ground in the said bill of complaint described as numbers 136, 96, 45, and as to all the said five lots of land situated on Broadway and in the bill alleged to have been set apart to John Haberdinck on the partition in the bill mentioned, excepting the two parcels of land one fifty feet in width on the southwesterly side of lot 163, and one fifty-eight feet in width on the southwesterly side of lot 161, and each parcel extending from Broadway to the rear of the lots of uniform width and parallel to the sides of said lots respectively, all title to and possession of which said lots is disclaimed by these defendants, as in their disclaimer in this behalf appears.

And as to all the discovery in the said bill of complaint prayed or sought against these defendants, excepting as to the several

pieces of ground above described as hereinafter disclaimed; and except as to that part of the bill of complaint which seeks a discovery as to the charge that any supposed term of years in any supposed demise or demises of any of the pieces of ground in the bill of complaint mentioned, other than the said several piecies of land above described as disclaimed, did not expire until after the termination of the year of our Lord one thousand eight hundred and nineteen.

And except so much of the bill of complaint as seeks a discovery as to the possession since forty years prior to the filing of the bill of complaint, namely, the twenty-fifth day of March in the year of our Lord one thousand seven hundred and ninety-nine, of the pieces of ground in the bill of complaint described, other than those above described as hereafter disclaimed.

And as to any statements and claims of these defendants or any one in their behalf since that date, that these defendants held the same under any demises of John Haberdinck or under any title subordinate to the title of the complainants and Peter Haberdinck, or any of them.

And except so much of the bill of complaint as seeks a discovery of the pretence by these defendants since the said last mentioned date, that they have held and enjoyed the lands in the said bill of complaint (other than the said lots above described as hereinafter disclaimed) under a claim of title adverse and hostile to that of the complainants, and thereby have acquired a valid title to the said lands so held and enjoyed.

And except as to so much of the said bill of complaint as seeks a discovery from these defendants in relation to the lands in the bill of complaint mentioned, other than the pieces of ground above described as hereinafter disclaimed.

As to the allegation that these defendants first entered into the possession of such lots and pieces of ground as assignees of leases for long terms of years, made by John Haberdinck, in his life time, which terms were unexpired at his death, but have expired lately, and the allegation that under and by virtue of any such title or any title subordinate to the title of the complainants and Peter Haberdink in the said bill of complaint named, these defendants have at any time claimed, held, and enjoyed the said several pieces of land aforesaid.

And except as to the allegation that these defendants in making an inventory and return, bearing date the first day of February, in the year of our Lord eighteen hundred and ten, of their property and income under the statute in such case made and provided, signed by Gerardus A. Kuypers, proved and acknowledged and filed in the office of the assistant register of the court of chancery of the State of New York, did represent the said lots and parcels of land to have been demised to the said Church by the said John Haberdinck, and to be held by them under such demise, and the supposed extracts from the said inventory and return.

And except as to so much of the bill of complaint as charges that the yearly value of the lands possessed by these defendants, and in the bill of complaint alleged to be derived to the complainants and Peter Haberdinck by descent from John Haberdinck, at the time when these defendants first entered into the possession thereof and on the twenty-fifth day of March, one thousand seven hundred and ninety-nine, or for years afterwards, greatly exceeded the amount which these defendants at such a time were by law authorized to take and hold.

Amendment.

And except to so much of the bill of complaint as charges, in relation to the time between the first entry of these defendants into possession of the said lands and the twenty-fifth day of March, one thousand seven hundred and ninety-nine, that these defendants, in order to lessen and keep down the annual amount of the income and rents of the said several lots and parcels of land, have executed leases of the said premises or parts thereof, for terms of several years, at a low and inadequate rent, and then sold the terms of such leases for large sums of money.

These defendants do plead in bar, and by way of plea say, that for all the time commencing forty years prior to the filing of the bill of complaint, namely, commencing on the twenty-fifth day of March, in the year of our Lord one thousand seven hundred and ninety-nine, until and at the time of the filing of this plea, these defendants were and have been, and are by themselves and tenants holding under them, in the sole and exclusive possession of all and singular the lands in the bill of complaint mentioned, (excepting the lands above described as hereinafter disclaimed,) during all which time of possession, all and singular the said lands have been improved by buildings and enclosed with a substantial enclosure, excepting that the land twenty-five feet in width from John streeet to to Fair street now Fulton street between the side of lots 84 and 86 and a continuation thereof, having been during all that time enjoyed as a public street for access to the lands upon the same, and as a public street then, ever since and now, used by all good citizens of this State as a public street and highway, without rents, issues, or profits thence accruing, and excepting a piece of land twenty-five feet in width extending from the rear of lot 62 in the said bill mentioned seventy-five feet along the rear of lots 41, 42, and 43, and excepting the two pieces of land, the one extending along the southwesterly side of lot number 68, and the rears of lots 77, 78, 79, and 80; the other extending along the northeasterly side of lot 66, and the rears of lots 32, 33, 34, and 35, from Nassau street to the rear of the said lots; and during all that time these defendants have by themselves and their tenants holding under them, actually occupied and possessed all and singular the said lands, claiming and enjoying the

same, during all the time aforesaid, as being seized thereof in their demesne as of fee in severalty, and in their own sole and exclusive right as the sole and exclusive owners thereof, in their own right in fee simple, and to their own sole and exclusive use and not otherwise; and during all that time these defendants have been in the sole and exclusive receipt and enjoyment of the rents, issues, profits, avails, and proceeds thereof, to the sole and exclusive use of the said corporation claiming the right to receive and enjoy the same to their own use and not otherwise.

And as to the said pieces of land twenty-five feet in width extending from the rear of lot 62 in the bill of complaint described seventy-five feet along the rears of lots 41, 42, and 43, and as to the piece of land extending along the southwesterly side of lot No. 68 and the rears of lots 77, 78, 79, and 80, and the piece of land extending along the northeasterly side of lot No. 66 and the rears of lots 32, 33, 34, and 35, from Nassau street to the rears of the lots 66 and 68, respectively, these defendants by way of plea say, that more than forty years before the filing of the complainants' bill of complaint, (but the precise time and date these defendants are unable to set forth, they not having access to the deed or deeds of conveyance thereof, or any counterpart or copy thereof,) these defendants being in possession in their own right in severalty, and claiming the right to sell and convey the same in fee simple, absolute, did grant and convey the same in fee simple, absolute, for a valuable consideration to them paid, and which The Minister, Elders, and Deacons of the Reformed Protestant Dutch Church of the city of New York aforesaid, received and held and appropriated to their own use, claiming a right so to do, and without any accountability to any person or persons whatever; and the said premises have ever since been occupied, held, and enjoyed under the said conveyance, adversely to the claims of the complainants in their said bill set forth, and to all other persons whatever.

Averments.

Without at any time during the said period commencing forty years next prior to the filing of the bill of complaint, having held or possessed the premises embraced in this plea or any part thereof, or any estate therein, or any rents, issues, profits, avails, or proceeds of or arising out of the same, in common or undivided with or as trustees of the complainants, and Peter Haberdinck, or any of them, or those under whom they or any of them claim to have derived title; and without any estate, right, interest, or claim of title, estate, right, or interest, under any term or terms of years made or granted by the said John Haberdinck in the bill of complaint in this behalf named, and without ever having entered into the same or any of them, or claimed, held, or enjoyed the same or any of them, under any title or claim of title subordinate to the title of the complainants and Peter Haberdinck in the bill

of complaint named or any of them; and without having entered into the same or any part thereof, or into the receipt of the rents, issues, profits, proceeds, or avails of the same lands or any of them, or at any time having claimed, held, or enjoyed the same, under any demise or demises, instrument or instruments of lease made or granted by John Haberdinck to these defendants or to any other person or persons whomsoever.

Amendment.

And these defendants further aver and plead, that the yearly value of the lands possessed by these defendants and in the bill of complaint alleged to be derived to the complainants and Peter Haberdinck, by descent from John Haberdinck, did not on the twenty-fifth day of March, one thousand seven hundred and ninety-nine, or at the time of the first entry of these defendants into possession of the same, exceed the yearly value which these defendants at those times respectively were by law entitled to take and hold, namely, at the time of the first entry therein of these defendants the yearly value of two hundred pounds, and on the twenty-fifth day of March, one thousand seven hundred and ninety-nine, the yearly value of nine thousand dollars, which are the amounts which these defendants at those dates respectively were by law entitled to take and hold; and they aver and plead that these defendants did not at any time prior to the said twenty-fifth day of March, one thousand seven hundred and ninety-nine, in order to keep down the annual amount of the income and rents of the said lands, execute any leases thereof at a low or inadequate rent, or sell any such terms of years or leases.

And these defendants do therefore plead the several matters aforesaid in bar to the relief and to the discovery unto which the same are pleaded as aforesaid, and humbly pray the judgment of the court whether they are bound to make any further or other answer to the parts of the said complainants' said bill of complaint unto which the same are pleaded as aforesaid.

Answer.

And these defendants not waiving their said plea, but relying thereon, and for better supporting the same for answer say, that they have not, and from their knowledge or information derived from any of their muniments of title they never had any lease, nor demises, original or counterpart, made by John Haberdinck in the bill of complaint mentioned, in his lifetime of any of the lands in the bill of complaint mentioned (not however answering as to the lots described in the bill of complaint as hereinafter disclaimed and mentioned in the disclaimer of these defendants,) or of any of the said lands, or of any lots, or of any one lot, or of any piece or parcel of the same, or of any of the lands in the bill of complaint men-

tioned as left undivided between him and his tenants in common which terms expired at any time within forty years prior to the filing of the bill of complaint; and if any demise, demises, or instrument or instruments of lease, of any of the said lands, for any term or terms of years whatever, made by the said John Haberdinck ever existed, of which these defendants have no knowledge, nor original counterpart or muniment of such leasehold title, these defendants deny that any term or terms thereby granted, continued until or beyond the twenty-fifth day of March, in the year of our Lord one thousand seven hundred and ninety-nine; only excepting a writing on parchment purporting to be an indenture of lease, purporting to be made by John Haberdinck of the first part, and William Huddleston of the second part, for the lots of land in the bill of complaint described as Nos. 1, 2, 3, granting a term of seventy years, from the first day of May, in the year of our Lord one thousand seven hundred and twenty-three, and which bears date the twenty-sixth day of March, in the year of our Lord one thousand seven hundred and twenty-three, which lease is in these defendants' possession, but which they do not believe to be genuine.

And these defendants further answering in support of their plea say, that they have had possession of all and singular the lands in the bill of complaint mentioned (excepting the lands above described as disclaimed by these defendants in the disclaimer sub joined to this plea) ever since, and during the said period commencing forty years prior to the filing of the bill of complaint.

And these defendants further answering in support of their said plea say, that for the period commencing forty years prior to the filing of the bill of complaint, and until and at the time of the filing of this plea, they have claimed, held, and enjoyed, all and singular the lands in the said plea mentioned as held and enjoyed by them, by the actual occupation thereof by themselves and their tenants holding under them, the same lots all being and having at all times been improved by buildings, and being and having at all times been enclosed by a substantial enclosure, excepting only a street called Dutch street, of the width of twenty-five feet, from John street to Fair street, (now called Fulton street,) running through the land in the said bill, mentioned as undivided land, and between lots 84 and 86, and which street has always during the said period been enjoyed as a public street for access to the land adjacent, and for the public benefit and passage of all good citizens of this State as a public highway and street.

And these defendants further answering in support of their plea say, that they have at all times within the period from the time of the filing of their said plea, to the period of forty years anterior to the filing of the said bill of complaint, given out and pretended and that, truly, that during all that period they had always held and enjoyed the said lands in their possession and seizin, as alleged in their said plea, under a claim of title adverse and hostile to, and inconsistent with that of the complainants and Peter Haberdinck,

and their ancestors, and of each and every of them, and of the ancestors of each and every of them, and have thereby a valid title to the said lands.

Amendment.

And these defendants further answering in support of their plea say, that they deny that they first entered into the possession of the said lands enjoyed by them, or into the enjoyment thereof, or of any part or parcel of the same, or into the receipt of the rents, issues, profits, or avails of the said lands, or any of them, as lessees or assignees of any lease whatever, of the said John Haberdinck, or that they have at any time ever claimed, held, or enjoyed the same under any title derived from any demise of the said John Haberdinck, or that during the said period commencing forty years prior to the filing of the bill of complaint, these defendants had or held possession of any of the lands in the said plea described as possessed by them, under any estate, right, or interest, or under any claim of title, right, estate or interest, under any term or terms of years, made or granted by the said John Haberdinck, in the bill of complaint in this behalf named, which have expired since the death of the said John Haberdinck, and have lately expired, or under any other supposed term or terms of years, made or granted by him, or under or by virtue of any other title derived from the said John Haberdinck, and subordinate to the title of the complainants and Peter Haberdinck, or of any of them, or of their ancestors, or of the ancestors of any of them; and especially these defendants deny, that they had or held such possession of the said lands or any of them, or any part thereof, under or by virtue of any demise of any of the said lands or premises, or of any parts thereof, or of the rents, or reversions thereof, or of any of such rents or reversions, for the term of ninety-nine years, or for any other term of years, made by the said John Haberdinck to these defendants, or to any other person or persons, and assigned to these defendants, or coming to them by assignment, which expired at any time between the year eighteen hundred and ten, and the year eighteen hundred and twenty-two, or at any time afterwards.

And further answering in support of their said plea, these defendants say, that they have not during any part of the said period commencing forty years before filing the said bill of complaint, until the time of the filing of the said plea, or at any other time, claimed, held, or enjoyed, any of the lots or pieces of land, in the said plea alleged to have been enjoyed by these defendants, under or by virtue of any title whatever, derived from the said John Haberdinck, and subordinate to the title of the complainants, and the said Peter Haberdinck, or to the title of any of them.

And these defendants further answering in support of their plea say, that in an inventory and return, bearing date the first day of February, in the year of our Lord one thousand eight hundred and

ten, of the property and income of these defendants, signed by Gerardus A. Kuypers, then president of these defendants, and acknowledged, proved and filed, as in the said bill is alleged, the expressions extracted in the said bill of complaint do through error and mistake occur, namely, "sundry lots of ground demised to the said church, by the said Haberdinck, deceased, and being part of a patent called the Shoemaker's land, in the Second and Third ward," and again, "rents arising from the lots demised by John Haberdinck, and those purchased $12,214 39," and appear by the said inventory to be represented as derived to these defendants by demise. But these defendants deny that any lands were at the said time held by, or in virtue of, or in consequence of any demise of John Haberdinck, or by him, or any one acting in his name, and these defendants allege, that the word "demised" in each of the said instances was a clerical error, and is wholly erroneous; and that the same was, as they are advised, and humbly submit, wholly immaterial for the purposes of such return and inventory, under the statute requiring the same, and has therefore occurred through mere mistake, accident, and error, these defendants never have had any demises of the said lands from the said John Haberdinck, to themselves, or to any other person or persons, and derived to these defendants by mesne, assignments, or otherwise; and these defendants have never seen or known of any such demises, or any entry or evidence of the same, in any of the muniments of title or possession of these defendants.

Amendment.

And these defendants further answering in support of their said plea, say, that when these defendants first entered into the possession of the lands above alleged to have been possessed by them, the yearly value of the said lands was very small and inconsiderable, the same not being improved, but vacant lots, so far as the knowledge or information and belief of these defendants extends, and such yearly value did not exceed the sum of two hundred pounds, but these defendents have no knowledge nor information as to the amount of such yearly value, except as last above stated; and the yearly value thereof, on the twenty-fifth day of March, one thousand seven hundred and ninety-nine, did not exceed the sum of nine thousand dollars, so far as these defendants know, are informed and believe. And these defendants further answering deny, that they at any time prior to the twenty-fifth day of March, in the year one thousand seven hundred and ninety-nine, made any leases of the lands aforesaid, or of any part thereof, in order to keep down the annual amount of the income and rents of the said lots of land, or any of them, or any parts thereof; or that at any time prior to the last mentioned date, they made any leases, or sold any terms of years, otherwise than for the full and adequate rent therefor, according to all the knowledge or information and belief of these defendants.

Disclaimer.

And these defendants, as to so much of the said bill of complaint as demands discovery or relief, touching the lands in the said bill of complaint described as Nos. 136, 96, 45, and as to the five lots of land on Broadway, in the bill of complaint alleged to have been set apart to John Haberdinck, on the partition mentioned in the bill of complaint, excepting a part of the said lot 163, fifty feet in width, and extending the whole depth of the lot from Broadway, and along the southwesterly side thereof, and excepting a part of lot 161, fifty-eight feet in width, extending the whole depth of the lot from Broadway and along the southwesterly side thereof, these defendants say, that they do not know that they these defendants ever had, nor have they ever claimed, or pretended to have, nor do they now claim, or pretend to have, any right, title, interest, or possession of, in or to the said last mentioned lands, or any part thereof, and these defendants do disclaim all right, title, interest, or possession of, in or to the said last mentioned lands, and every part thereof.

And these defendants deny all and all manner of unlawful combination, and confederacy in the premises.

All which matters and things, these defendants are ready and willing to aver, maintain, and prove, when, and as this honorable court shall direct; wherefore they humbly pray to be hence dismissed with their costs and charges, in this behalf most wrongfully sustained.

Amendment.

THOMAS DE WITT, *Prest.* [L. S.]
CORNELIUS BOGERT, *Clerk.*

Leonard W. Kip, solicitor for the defendants, The Minister, Elders, and Deacons of the Reformed Protestant Dutch Church of the city of New York, Isaac Young, James C. Roosevelt, and Abraham Van Nest.

ISAAC YOUNG,
JAMES C. ROOSEVELT,
ABRAHAM VAN NEST.

G. WOOD,
DANIEL LORD, Jr. } *Of Counsel.*

Amendment.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

On this fourteenth day of December, A. D. 1839, Cornelius Bogert, of the city of New York, came before me and made oath, that he is the clerk of The Minister, Elders, and Deacons, of the Reformed Protestant Dutch Church of the city of New York, defendants in the above cause; and that the seal to the above answer affixed, is the corporate seal of the said corporation, and was thereto duly affixed by their authority.

Amendment.

And on the same day the defendants, Isaac Young, James C. Roosevelt, and Abraham Van Nest, were sworn before me, that they had severally read the plea and answer and disclaimer, above written as amended, and know the contents thereof; and that according to all the knowledge, information, and belief of them and of each of them, the said plea answer and disclaimer, and all the statements and averments thereof are true.

GEO. W. MORTON,
United States Commissioner.

At a stated term of the circuit court of the United States of America for the southern district of New York in the second circuit, on Wednesday the eighth day of April, in the year of our Lord one thousand eight hundred and forty.

Present: the honorable Smith Thompson, associate judge of the Supreme Court of the United States, and the honorable Samuel R. Betts.

SMITH HARPENDING and others,
vs.
THE MINISTERS, ELDERS AND DEACONS of the Reformed Protestant Dutch Church of the city of New York.

Mr. Daniel Lord, jr. for the defendants moves the hearing of the cause upon the plea answer and disclaimer of the defendants.

Mr. Lord argues for the defendants, April 9, 1840.

Mr. Butler argues for the complainants, June 2, 1840.

This cause being still on hearing, Mr. David B. Ogden argues for the complainants.

Mr. Wood argues for the defendants.

The arguments in this cause having been this day concluded.

Curia advisari vult. December 24, 1840.

Present: Judges Thompson and Betts.

The matter of the plea and answer put in by the defendants, The Ministers, Elders and Deacons of the Reformed Protestant Dutch Church of the city of New York, to certain parts of the bill of complaint, having been heretofore argued by Mr. Butler and D. B. Ogden on behalf of the complainants, and Mr. Lord and Mr. Wood on behalf of the defendants, and this court having deliberated thereon, it is held by this court, that the said plea of the said defendants is good and sufficient.

And on motion of Mr. Kipp, solicitor for the said defendants, It is ordered, that the same do stand and be allowed as a good and

sufficient plea to the matter unto which the same is pleaded. And it is further ordered, that said defendants recover their costs to be taxed.

SAML. R. BETTS.

CIRCUIT COURT OF THE UNITED STATES, *for the Southern District of New York, in the second Circuit, in Equity.*

SMITH HARPENDING, BENJAMIN YORK and others,
vs.
THE MINISTERS, ELDERS AND DEACONS of the Reformed Dutch Church of the City of New York and others.

To the Clerk of the Circuit Court of the United States for the Southern District of New York, Second Circuit.

Sir: Please to take notice that we hereby appeal for and on behalf of the complainants, from the final decree rendered in this cause on the 24th day of December A. D. 1840, to the Supreme Court of the United States, to be held to Washington in the District of Columbia on the second Monday of January next to the end, that the decree of the said circuit court may be reversed and that the said Supreme Court may decree, that the plea of the said defendants may be disallowed instead of allowed. And I hereby request hat the proceedings had in this cause in the said circuit court may by duly certified and transferred to the said Supreme Court of the United States, to the end that the said Supreme Court may proceed thereupon as the said case may require.

Yours &c.,
GRAHAM & SANDFORD,
Sol. for Compl.

December 30, 1840.

In the Supreme Court of the United States.

SMITH HARPENDING, BENJAMIN YORK, and others,
Appellants,
vs.
The MINISTERS, ELDERS, and DEACONS of the Reformed Protestant Dutch Church of the City of New York and others, Respondents.

To the Chief Justice and Associate Justices of the Supreme Court of the United States, the Petition of Appeal of the abovenamed Complainants respectfully shows:

That a decree was lately made in the circuit court of the United States for the southern district of New York, in the second circuit,

in equity, bearing date the twenty-fourth day of December last past, in a certain cause pending in the said court, wherein the abovenamed appellants were complainants, and the above named respondents and others were defendants, in and by which decree it was ordered, adjudged and decreed, that the plea put in by the said respondents in the said cause was good and sufficient, and that same should stand and be allowed as a good and sufficient plea in the said cause to the matters unto which the same was pleaded ; and that the said respondents should recover their costs, to be taxed.

Which said decree of the said circuit court is, as these appellants are advised, erroneous, and ought to be reversed.

Wherefore, these appellants respectfully pray that the said decree of the said circuit court may be sent to the said Supreme Court of the United States, and filed with the clerk thereof, without delay, and that the same and every part thereof may be reversed ; and that these appellants may be restored to all things which they have lost by the said decree.

And these appellants, as in duty bound, will ever pray, &c.

Dated January 2, 1841.

GRAHAM & SANDFORD,
Solicitors for Appellants, and Attorneys, &c.
B. F. BUTLER,
D. B. OGDEN,
Of Counsel.

In the Supreme Court of the United States.

SMITH HARPENDING, BENJAMIN YORK, and others, Appellants,
vs.
The MINISTER, ELDERS, and DEACONS of the Reformed Protestant Dutch Church of the City of New York, and others, Respondents.

The Answer of the Minister, Elders, and Deacons of the Reformed Protestant Dutch Church of the City of New York, Respondents, to the Petition and Appeal of the above named Appellants, Smith Harpending, Benjamin York, and others.

The respondents, not confessing or acknowledging all or any of the matters or things in the said petition of appeal contained and set forth to be true, for answer thereunto say, that they believe it to be true that such decree as is complained of by the appellants was made, in the circuit court of the United States for the southern district of New York, in the second circuit, in equity, as is set forth in the said petition of appeal, but as to the date, substance, and contents thereof, these respondents crave leave to refer thereto when the same shall be produced.

And these respondents are advised and believe that the matters in said decree complained of by the said appellants in the said petition of appeal, are agreeable to equity and justice, and therefore pray that the same may be affirmed, and that the said petition of appeal may be dismissed this honorable court, with costs to be adjudged to these respondents.

LEONARD W. KIP,
Solicitor for Respondents, Attorney, &c.
DANIEL LORD, JR.,
GEORGE WOOD,
Of Counsel.